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HAWAII
LABOR RELATIONS BOARD

HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

In the Matter of)	CASE NO. OSAB 2002-17
DIRECTOR, DEPARTMENT OF LABOR)	(OSHCO ID M0685)
AND INDUSTRIAL RELATIONS,)	(304214158)
)	
Complainant,)	STIPULATION AND SETTLEMENT
)	AGREEMENT; EXHIBITS A – E;
vs.)	APPROVAL AND ORDER
)	
HAWAII CONCRETE PRODUCTS, INC.,)	
)	
Respondent.)	
)	
)	
)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and HAWAII CONCRETE PRODUCTS, INC., ("Respondent") having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

WHEREAS, on or about September 24 through September 27, 2001, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 91- 027 Kaomi Loop, Kapolei, Hawaii 96707 ("Respondent's Worksite") in Inspection No. 304214158; and

WHEREAS, as a consequence of the above-stated inspection, the Director, through

HIOSH's Administrator, issued a Citation and Notification of Penalty ("Citation") to Respondent on March 8, 2002, alleging violations of the Hawaii Occupational Safety and Health Standards and assessed a penalty of \$28,000.00, a copy of which is attached hereto as Exhibit "A".

WHEREAS, HIOSH had previously inspected Respondent's Worksite in Inspection No. 120599279 from September 14 through September 20, 1995 and issued a Citation and Notification of Penalty on November 30, 1995, and assessed a penalty of \$17,200, a copy of which is attached hereto as Exhibit "B"; and

WHEREAS, during Inspection No. 120599279, HIOSH learned that Respondent did not abate violations cited following a prior inspection, Inspection No. 120604111 that occurred from October 27, 1994 through November 29, 1994. Consequently, HIOSH issued a Notification of Failure to Abate Alleged Violations, on November 30, 1995 and assessed a penalty of \$54,000, a copy of which is attached hereto as Exhibit "C"; and

WHEREAS, the Director and Respondent hereto entered into a Stipulated Settlement Agreement; Order on May 25, 2000 ("May Settlement") covering both the Citation issued in Inspection No. 120599279 and the Failure to Abate Alleged Violation which reduced the combined penalty of \$71,200 to \$25,000, a copy of which is attached hereto Exhibit as "D"; and

WHEREAS, as of March 8, 2002, Respondent did not fully comply with all of the terms of the May Settlement; and

WHEREAS, Respondent timely contested the Citation in Inspection No.304214158;

WHEREAS, a misunderstanding by both parties resulted in the Director believing that settlement had not been reached and that the hearing scheduled for August 19, 2002 was on, thus incurring additional trial costs for an expert witness of \$1,750;

WHEREAS, the Parties hereto wish to avoid the expense of litigation and to globally compromise and settle the Citation issued in Inspection No. 304214158, and the May Settlement.

NOW THEREFORE, the Parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 91-027 Kaomi Loop, Kapolei, Hawaii 96707.

3. At all relevant times, Respondent was an employer, as defined in section 396-3, HRS, and employed employees, as defined in section 396-3, HRS, and was therefore subject to the requirements of Chapter 396, HRS, the Hawaii Occupational Safety and Health Law.

4. Respondent shall certify that Respondent has abated each item of the Citation and Notification of Penalty issued in Inspection No. 304214158 in compliance with the abatement requirements under Hawaii Administrative Rule §12-51-22. Respondent shall submit the completed abatement certification to HIOSH no later than 30 days after the filing of this Agreement; failure to timely do so may result in additional penalties or follow up inspections.

5. The Citation in Inspection No.304214158 issued on March 8, 2002, regarding violation of Hawaii Administrative Rules, Title 12, Department of Labor and Industrial Relations, Subchapter 8, Occupational Safety and Health ("HAR") §12-84-2 (f) and its corresponding characterization, is affirmed. See Exhibit A.

6. The Director reduces the penalty issued in Inspection No. 304214158 from \$28,000 to \$9,450.

7. The parties agree and affirm that the May Settlement is superseded by this Agreement.

8. The Citation and Notification of Penalty for Inspection No. 120599279 and the Failure to Abate Inspection No. 120604111, issued on November 30, 1995, is affirmed in its entirety except that the penalty is reduced from a total of \$71,200 (\$17,200 and \$54,000) to \$25,000.

9. By entering into this Agreement, Respondent further agrees that Respondent will cause a half-page advertisement, a copy of which is attached hereto as Exhibit "E," to be published no less than twice within a one month period in the Pacific Business News with the first advertisement to be published within two weeks of the execution of this Agreement by Respondent.

10. The penalty reduction in item 6 is based in part on (a) the Director sharing in the cost of the half-page advertisement and (b) the Respondent sharing in the cost of the expert witness

11. Respondent agrees to pay the aggregate reduced penalty of \$34,450 (\$9,450 + \$25,000) upon execution of this Stipulation and Settlement Agreement ("Agreement").

12. Respondent further agrees that if it fails to comply with each and every term of this Agreement then the Director may give notice and may declare the original penalties in the amount of \$99,200 (\$17,200, \$54,000, and \$28,000) resulting from this Citation and the Citations issued on November 30, 1995 plus reasonable attorneys' fees, other fees and court costs related to the default action and subsequent collection efforts, if any, provided that all payments made by Respondent shall be credited to the Respondent and retained by the Director. The original citation and penalty as issued on March 8, 2002 in Inspection No.304214158 shall then become a final order.

13. Except for the stipulated amendments described above, the Citation issued on March 8, 2002 is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

14. Respondent agrees to continue to comply with Chapter 396, HRS, the Hawaii Occupational Safety and Health Law, and the related rules.


15. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent, which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

16. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three days excluding weekends and State holidays.

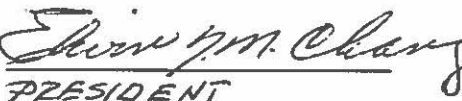
DATED: Honolulu, Hawaii, September 17, 2002.


APPROVED AS TO FORM:

HAWAII CONCRETE PRODUCTS, INC



Ernest C. Moore III,
Attorney for Respondent

By: 
Its PRESIDENT


LEO B. YOUNG
Deputy Attorney General
for the DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS
State of Hawaii

APPROVED AND SO ORDERED:

ORDER NO. 12

DATED: September 18, 2002


Brian K. Nakamura, Chairperson


Kathleen Racuya-Markrich, Member


Chester Kunitake, Member